

PROFESSIONAL SERVICES CONTRACT

(NOTE: The contract clauses that are marked with an asterisk [*] are required for all TSEP-funded contracts.)

This Contract is entered into this _____ day of _____, 19____, by and between the (City/Town/County of _____), Montana, herein referred to as the ("City/Town/County") and (name of Contractor), whose address is _____, herein referred to as the "Contractor," Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded the (City/Town/County) grant funds under the Montana Treasure State Endowment Program (TSEP) for purposes of (description of project); and

WHEREAS, the (City/Town/County) desires to engage the Contractor to render certain services related to the administration of the above described TSEP project; and

WHEREAS, the (City/Town/County) has complied with state procurement requirements regarding the selection of contractors; and

WHEREAS, the (City/Town/County) desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of the project;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. EMPLOYMENT OF CONTRACTOR. The (City/Town/County) agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of the TSEP project for the (City/Town/County) as approved by the Department.
- *2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and that neither its principals nor its employees, if any, are employees of the (City/Town/County) for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.
3. LIAISON. The (City's/Town's/County's designated liaison with the Contractor is _____. The Contractor's designated liaison with the (City/Town/County) is _____.
- *4. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on _____. The services to be performed by the Contractor will be _____.

completed no later than _____.

- *5. SCOPE OF SERVICES. The Contractor will perform the following services:

(Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the contractor, including the timetable for completion of key tasks. Consult with your TSEP liaison as to the specific services that may be appropriate for each grant category.)

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the (City's/Town's/County's) financial officer, legal advice, fiscal audits or assistance with activities not related to the TSEP project.

- *6. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the (City/Town/County) will pay the Contractor a sum not to exceed \$ _____ as in the manner set forth in the attached Exhibit _____, which by this reference is made a part of this Contract. Each specific service the Contractor will provide under this Contract, and the maximum amount that the (City/Town/County) will pay the Contractor for each of these services, is set forth in the attached Exhibit _____. The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Exhibit _____. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

- *7. CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the TSEP project which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in performing this Contract, it will employ no person who has any such interest.

8. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Contractor may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of the (City/Town/County). Any subcontractor or assignee will be bound by all of the terms and conditions of this contract.

9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the

(City/Town/County) of TSEP funds from the Department and that in the event that said funds are not provided, the (City/Town/County) incurs no responsibilities or liabilities under this Contract.

*10. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

- (a) Termination due to loss of funding. This Contract will terminate, in whole or in part, at the discretion of the (City/Town/County) in the event that the Department reduces or terminates payments under the TSEP so as to prevent the (City/Town/County) from paying the Contractor with TSEP funds. In this event, the (City/Town/County) will give the Contractor advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss or reduction of the TSEP grant.
- (b) Termination for cause.
 - (i) If, at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Contract, the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Contract to be terminated in whole or in part.
 - (ii) If the Contractor is the defaulting party, it will thereafter be entitled to receive payment for those services satisfactorily performed to the date of termination less the amount of reasonable damages suffered by the (City/Town/County) by reason of the Contractor's failure to comply with the contract's terms and conditions.
 - (iii) If the (City/Town/County) is the defaulting party it will pay the Contractor for those services satisfactorily performed to the date of termination plus the amount of reasonable damages suffered by the Contractor by reason of the (City/Town/County's) failure to comply with the contract's terms and conditions.
 - (iv) Notwithstanding the above, the defaulting party is not relieved of liability to the aggrieved party for damages sustained by the aggrieved party by virtue of any breach of this contract.
 - (v) If the Contractor is the defaulting party, the (City/Town/County) may withhold any payments to the Contractor for purposes of setoff until the exact amount of damages due the (City/Town/County) from the Contractor is determined.

*11. DOCUMENTS INCORPORATED BY REFERENCE. THE (City's/Town's/County's)

application to the Department for TSEP funding, dated _____, 19____, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.

- *12. NONDISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
- *13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the (City/Town/County) and the Department which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the (City/Town/County) and the Department.
- *14. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the (City/Town/County) to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the (City/Town/County) or its authorized representative, and will be retained for five years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the (City/Town/County).
- *15. ACCESS TO RECORDS. It is expressly understood that the Contractor's records relating to this Contract will be available during normal business hours for inspection by the (City/Town/County), the Department, and, when required by law, the Montana Legislative Auditor.
- *16. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE. The parties understand and agree that performance of this contract is in the (City/Town/County) of (Name of City/Town/County) and that in the event of litigation concerning it, venue is the _____ Judicial District in and for the County of _____, State of Montana.

This Contract will be construed under and governed by the laws of the State of Montana.

- 17. INDEMNIFICATION. The Contractor waives any and all claims and recourse against the (City/Town/County), including the right of contribution for loss and

damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Contractor's performance of this contract except for liability arising out of concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the (City/Town/County) against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees.

18. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on

the _____ day of _____.

CONTRACTOR

CITY/TOWN/COUNTY OF _____

BY: _____
Contractor

BY: _____
Official Representative
of the (City/Town/County)

DATE: _____

DATE: _____